



DEPARTMENT OF THE PROSECUTING ATTORNEY

Peter B. Carlisle, Prosecuting Attorney
Iwalani D. White, First Deputy



Peter Carlisle gives the keynote address for the Visitor Aloha Society of Hawaii (VASH) Awards Banquet. The Prosecutor's Office works with VASH to help visitors who become victims of crime in Hawaii.

POWER, DUTIES AND FUNCTIONS

The voters of Oahu elect the prosecuting attorney every four years. The prosecuting attorney shall:

- a) Attend all courts in the city and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city;
- b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state;
- c) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges;
- d) Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration; and
- e) Investigate all matters that may properly come before the prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.

ORGANIZATION OF THE DEPARTMENT

The Department is organized into Administration and six divisions. Each of the divisions has a team of trial attorneys headed by at least one Chief and, in some divisions, one or more team captains. Teams of support staff, each of which is headed by a supervisor, assist the attorneys.

The six divisions are: (1) Screening and Intake Division; (2) Traffic and Misdemeanor Division; (3) Trials Division; (4) Career Criminal/Sexual Assault Unit; (5) Domestic Violence/Juvenile Offenders Division; and (6) Appellate Division.

A. SCREENING AND INTAKE DIVISION

The Screening and Intake Division (SID) consists of one division chief, 13 screening deputies, seven support staff, and two paralegal assistants.

SID screens most felony cases (except for domestic violence and white collar cases which are handled by a different division) brought to this department by the Honolulu Police Department and other state investigative agencies.

The SID reviews search warrants, felony cases and decides which ones to accept, which ones to reject, and which ones need follow-up work. SID also handles preliminary hearings in District Court and presents cases to the Grand Jury. Act 62 became effective on November 24, 2004. All non-custody cases that fall within Act 62 will go by way of Felony Information Charging. For the period beginning July 1, 2004 and ending June 30, 2005, SID handled 465 Grand Jury proceedings, 1140 preliminary hearings and filed 53 Information Charging cases.

B. TRIALS DIVISION

The Trials Division (Trials) consists of one division chief, five team captains and 19 trial attorneys. Three paralegal assistants and 12 clerical staff support the division.

This is the largest division and it handles all felony cases (except juveniles, sex assaults and domestic violence cases), including career criminals and misdemeanors if a jury trial is demanded. These type of cases include murder, assault, negligent homicide, robbery, burglary, theft, unauthorized control of propelled vehicle (stolen car), drugs, white collar, and campaign fraud.

For the time period of July 1, 2004 to June 30, 2005, the division cleared 1,861 cases.



Two career prosecutors were appointed to serve as judges in 2004. Randy Lee and Jennifer Ching both served as Deputy Prosecuting Attorneys since 1982. Lee headed the White Collar Crime Unit, and Ching headed the Juvenile Offender Unit at the time of their appointments.

C. CAREER CRIMINAL/SEXUAL ASSAULT UNIT

The career criminal/sexual assault unit (CC/SAU) consists of one chief and 13 attorneys. Three paralegals, seven clerical staff and five victim advocates assist them.

CC/SAU is a highly skilled prosecutorial litigation unit that vertically prosecutes those offenders who are identified as recidivists, or career criminals by Hawaii Revised Statutes Section 845-3, as well as all cases involving convicted felons in possession of or using firearms and all felony-level sexual offenders.

From the time the case is accepted into the office until the time it is disposed of by sentencing, one prosecutor is responsible for that and any other case the individual defendant may have pending. The prosecutor follows the case from preliminary hearing or grand jury, through pre-trial motions, trial and finally sentencing. Through this vertical prosecution, a special working relationship between the police, witnesses, victims and the prosecutor can be fostered. This approach permits continuity in prosecution and enables the prosecutor to better handle the many challenges presented by these cases.

Section 845 cases consist primarily of property crimes, such as burglary, theft, vehicle thefts and auto break-ins. These cases are almost exclusively motivated by a desire to obtain property to trade for money to buy drugs. The most common drug bought is crystal methamphetamine, or "ice". Ice is also a factor in the majority of the remaining crimes handled by this unit, the violent crimes such as murder, robbery, assaults and firearms offenses.

The vast majority of Sexual Assault cases involve children who are repeatedly victimized by acquaintances or family members. These cases all present unique prosecution problems, including late reporting, poor memory for dates in long-term abuse cases, and an absence of witnesses other than the child and the perpetrator. Other sexual assault cases include child-stranger and adult-stranger and adult-acquaintance cases.

This unit is also responsible for having the names of convicted sex offenders placed on the internet pursuant to Megan's Law.

D. DOMESTIC VIOLENCE/ JUVENILE OFFENDER DIVISION

The Domestic Violence / Juvenile Offender Division (DV/JO) consists of 20 attorneys, three paralegal assistants, six victim/witness counselors and 9 support staff organized into three teams. Each of these teams is highly specialized in the prosecution of domestic violence or juvenile crimes and is supervised by an experienced attorney.

The **Domestic Violence Felony Team** consists of six attorneys who are supervised by an experienced domestic violence felony prosecutor. This team is responsible for prosecuting all felony domestic violence cases. This team focuses on the more serious violent offenses stemming from intimate relationships (husband-wife, boyfriend-girlfriend and same sex couples) and parent child relationships.

The Domestic Violence Felony Team employs vertical prosecution to better deal with the dynamics of these cases. Through vertical prosecution, the assigned prosecutor works with the victims, witnesses, and police investigators from the inception of the case up through preliminary hearings, grand jury, pre-trial motions, trial, and sentencing. In order to accomplish this, a prosecutor is on-call 24 hours a day to assist police with various aspects of the investigation and then once completed, to review the case and make appropriate charging decisions. This approach maintains continuity and enables the prosecutor to better handle the many challenges presented by these cases which typically involve uncooperative victims who recant or minimize due to fear of and/or affection for the perpetrator.

The **Domestic Violence Misdemeanor Team** consists of eight attorneys who are supervised by an experienced felony prosecutor. This team handles all misdemeanor family or household member abuse cases under Section 709-906, HRS, along with all Family Court restraining order violations under Chapter 586, HRS. As such, this team is a unit that focuses on violence stemming from intimate relationships (husband-wife, boyfriend-girlfriend & same sex couples) and parent-child relationships.

This team also employs vertical prosecution to the extent that as a unit, they review, charge, and try their own cases. This helps ensure more consistency and better handling of these cases that are made difficult because the majority of victims are reluctant and/or uncooperative.

The **Juvenile Offender Team** consists of five attorneys supervised by an experienced Family Court Prosecutor. This team is responsible for the prosecution of all juvenile offenders (persons under eighteen years of age at the time of the offense). Their cases range from traffic/misdemeanor offenses to all types of felony offenses, including sexual assaults and murder. The offenders range from first-time offenders who commit less serious crimes to the hard-core repeat offenders who may be waived to adult court for more serious crimes.

This team also employs vertical prosecution to the extent that as a unit, they review, charge, and try the majority of their own cases. They do receive, however, some assistance at the initial conferral stage from the Screening & Intake Division and from the Domestic Violence Felony Team.

E. APPELLATE DIVISION

Currently, the Appellate Division consists of one chief and seven attorneys. They are assisted by a paralegal assistant and two support staff.

These attorneys represent the State of Hawai'i in all appeals from juvenile, criminal and traffic cases prosecuted by the Department of the Prosecuting Attorney.

In addition to appeals, attorneys in the Appellate Division also respond to motions and original proceedings filed in the Hawai'i appellate courts, such as petitions for *habeas corpus* and writs of prohibition or *mandamus*. These responses are often extensive and cannot be predicted as motions and petitions may be filed at any time.

Appellate attorneys also represent the State of Hawai'i in federal *habeas corpus* petitions where the petitioner contests the judgment and not the terms and conditions of incarceration. While these petitions do not normally require a court appearance, when appealed, they have from time to time required argument before the Ninth Circuit Court of Appeals, either here in Honolulu or in San Francisco.

In addition, the attorneys in the Appellate Division are also called upon to do research for the administration or other divisions in the department.

In fiscal year 2004-05, the Appellate attorneys filed 142 briefs in the State appellate courts, and twenty-one (21) other substantive documents. Attorneys in the division won 87% of their cases in the state appellate courts during this period.

F. MISDEMEANOR AND TRAFFIC DIVISION

This division is a high-volume unit handling thousands of cases each month. The caseload consists of traffic matters, Driving Under the Influence of Alcohol/Drug cases, criminal violations, petty misdemeanors, and full misdemeanors for the entire island of Oahu. This division has one chief, one captain and 15 trial lawyers and approximately 18 support staff. Prosecutors from this division are assigned to courtrooms at district courts in Honolulu, Ewa (Pearl City), Wahiawa/Waialua, Koolauloa/Koolaupoko (Kaneohe), and Waianae. The assigned attorneys do arraignments, motions, trials, and sentencing for a wide variety of cases that are prosecuted in these courts. An attorney assigned to this division does specialized prosecution in Street Solicitation, Waikiki Visitor Crimes, and Weed and Seed cases [see section on Community Prosecution].

G. 2004 LEGISLATIVE ACTIVITY AND 2005 LEGISLATIVE PACKAGE

2005 Legislative Activity

The department sponsored the following legislative bills, which passed in 2005. These bills:

- a) amend the state's pedestrian right-of-way law to require that drivers stop and yield the right of way to pedestrians who are: 1) in a crosswalk and on the same half of the roadway as the driver; or 2) approaching so closely from the opposite half of the roadway as to constitute a danger. Act 73, which became effective on May 25, 2005 also deleted penalty provisions from two traffic offenses, fleeing the scene of an accident involving damage



Prosecuting Attorney Peter Carlisle hosts a public forum on the 2004 Ballot Questions. In November 2004, voters overwhelmingly approved four constitutional amendments which were designed to help crime victims.

to a vehicle or property and filing a false report under the state's motor vehicle responsibility act, since penalties were already provided in another section; and

- b) clarify that the maximum penalty for driving while intoxicated by a person 18 years old or older with a passenger who is younger than 15 years of age shall not exceed the maximum term of imprisonment for a first, second or third offense of driving under the influence of an intoxicant. Act 33 took effect on April 27, 2005.

The department also supported the following bills which passed in 2005 that:

- a) implement the authority given to the legislature by a constitutional amendment overwhelmingly ratified by the voters which permitted the legislature to determine what sexual offense conviction information should be subject to public notification as well as the manner of access, and the conditions and procedures to terminate public access to sex offender registration information. Specifically, Act 45 provides that a person convicted of a class A felony sexual offense under state law or an equivalent conviction in another jurisdiction, would be required to register for a minimum of twenty-five years. A person convicted of a class B or class C felony sexual offense under state or its equivalent in another jurisdiction would be required to be registered for a minimum of 15 and 10 years respectively. Persons found to be an aggravated sex offender, repeat sexual offender or sexually violent predator would be required to register for life. Public access to registration information shall be available through the internet, designated police stations and the Criminal Justice Data Center for persons convicted of class A and B sexual offenses and persons found to be sexually violent predators, aggravated sexual offenders and repeat sexual felony offenders. Public access to registration information on persons convicted of class C felony sexual offenses or repeat misdemeanor sexual offenders shall be available only at designated police stations and the Criminal Justice Data Center. Act 45 took effect on May 9, 2005;



As a result of the 'Yes' Vote on Ballot Question #2 Governor Lingle signed a bill to restore the Hawaii Sex Offender Registry to its previous status. The website, containing pictures and addresses of registered sex offenders, received 1.6 million hits in the ensuing two weeks.

- b) create a new chapter on forensic identification in Hawaii Revised Statutes. Act 112, which became effective on July 1, 2005, authorizes DNA testing for all convicted felons. It also designates the Honolulu Police Department as the agency responsible for the management and administration of the state's DNA database and DNA identification program. In addition, the act establishes comprehensive procedures and standards for the taking, testing and use of DNA samples. Act 112 also provides for the extension of the statute of limitations for felony offenses involving evidence containing DNA if the test is performed prior to the expiration of the statute of limitations. Finally, the act also creates statutory guidelines for post conviction testing of DNA as well as permitting the use of buccal (cheek) swabs which are less intrusive and more cost effective than a blood test;
- c) create a provisional driver's license for persons at least 16 but less than 18 years old. The provisional license is intended to give teen drivers an opportunity to safely practice and increase their driving skills by: 1) restricting the number of minor passengers who may be transported by the provisional licensee to minors who are household members of the provisional licensee or one unrelated minor; and 2) requiring that a licensed driver who is the provisional licensee's parent or guardian be present while the provisional licensee is driving between 11:00 p.m. and 5 a.m. Act 72 will take effect on January 9, 2006;
- d) restrict pharmacies and retailers from dispensing no more than three packages or not more than nine grams of products containing pseudoephedrine without a prescription. Pseudoephedrine is a key component in the illegal manufacture of methamphetamine. Act 193 which became effective on July 1, 2005, also requires pharmacies and retailers to keep pseudoephedrine products in sight of a checkout counter or station, or behind a counter, or in a locked display case, or in an area under constant video monitoring. Finally, Act 193 makes it a misdemeanor offense to transport more than three packages of a pseudoephedrine product without a permit issued by the Department of Public Safety;

- e) provide that the theft of more than 25 pounds of agricultural products will constitute the offense of theft in the second degree, a class C felony. In addition Act 182 creates statutory provisions that permit a judge or jury to infer that agricultural products or livestock possessed without a movement or ownership certificate, when such certificate is required by law, is evidence that the products or livestock are stolen. Act 182 took effect on July 1, 2005;
- f) provide that persons who enter or remain on agricultural lands without the permission of the landowner, the landowner's agent or a person in lawful possession of the land shall be guilty of the petty misdemeanor offense of trespass in the second degree where the land is fenced or enclosed to exclude intruders, or where notices complying with the law have been posted stating that the land is private property or where there is visible presence of a crop under cultivation or being harvested. Act 181 took effect on July 1, 2005;
- g) make it a misdemeanor offense to misuse the 911 emergency telephone service by knowingly reporting a false alarm or making a false complaint or reporting false information in reckless disregard that a public safety agency will respond by dispatching emergency services. Act 17 took effect on April 20, 2005;
- h) amend the state law requiring physicians and surgeons to report certain suspicious injuries or wounds to the police to clarify that pertinent information regarding persons involved in a motor vehicle collisions resulting in serious injury or death shall be provided to the police. Act 39 took effect on May 2, 2005; and
- i) increase the crime victim compensation fee by \$5. The crime victim compensation fee is paid by convicted defendants and placed in a fund used to compensate victims of certain crimes, or the dependents of the victim if the victim is deceased or private citizens, for personal injuries or damage to property suffered in the prevention of a crime or the apprehension of a criminal. Act 144 which took effect on June 22, 2005 also clarified the payment priority between restitution, the crime victim compensation fee, the probation service fee, fines and other fees.

2006 Legislative Package

The department will be introducing a constitutional amendment to provide that for the purposes of ratifying the State Constitution or determining whether to convene a constitutional convention, blank votes on the matter shall not be counted as "no" or negative votes as they are currently. Under the proposed amendment, blank votes shall not be counted in the ratification of a constitutional amendment or the convening of a constitutional convention; only yes and no votes would be counted. Ratification of a constitutional amendment or the convening of a constitutional amendment would only occur if the yes votes exceeded the no votes. In addition, the department will also be supporting legislation that brings Hawaii's electronic surveillance laws in conformity with the federal electronic surveillance law prior to the USA Patriot Act.



Deputy Prosecuting Attorney Cecelia Chang (center) along with members of the community received the 2004 National Coordination Honor Award from the U.S. Department of Justice. Chang is the director of the Community Prosecution Program.

(from left: Judge Marcia Waldorf, Deputy Prosecutor Cecelia Chang, Assistant U.S. Attorney Ron Johnson)

H. COMMUNITY PROSECUTION (CP) PROGRAM

Community prosecution is a proactive, community oriented, problem-solving approach to law enforcement that embraces the role of the community in solving community crime and safety problems. A key component of community prosecution is collaboration. Partnerships among community residents, businesses, private institutions, and law enforcement and other governmental agencies are developed and directed toward crime prevention goals. The CP Team consists of two attorneys who actively engage in numerous CP initiatives to improve the quality of life in Honolulu.

I. DRUG COURT

There is one deputy prosecuting attorney assigned to the Hawaii Drug Court program (HDCP). This attorney attends Drug Court sessions four times a week to monitor the progress of Drug Court clients and provide the prosecution's perspective on dealing with program infractions. In addition to the regular scheduled court sessions, this deputy attends all other Drug Court proceedings, such as termination hearings, prepares memoranda of law and argues constitutional motions, conducts jury-waived trials, and argues sentencing. This attorney also reviews all applicants for Drug Court and plays an integral part in selecting appropriate candidates for this program. This attorney also assists in developing and improving the program, attends Drug Court Advisory Committee Meetings, educates personnel in the department, the Honolulu Police Department, and the community about the program, and created a written manual of procedures, policies and guidelines.

Between July 1, 2004 and June 30, 2005, approximately 75 new defendants were petitioned into the Hawaii Drug Court Program. During that time, 39 defendants graduated, spending an average of 21 months in the program. The Drug Court Program terminated 15 defendants for non-compliance of program rules. The Drug Court Program currently has 129 clients, including eight who are receiving intensive drug treatment in a residential setting.